

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Policies and Rules for the  
Direct Broadcast Satellite Service

)  
)  
) IB Docket No. 98-21  
)

REPLY COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby files its reply comments in this proceeding.

For the most part, the comments filed in response to the Notice of Proposed Rule Making ("NPRM") were consistent with the positions advanced by PanAmSat, and reflected broad support both for the Commission's specific proposal to consolidate its DBS rules in Part 25 as well as for its more general proposals to streamline and simplify the DBS rules and provide greater technical flexibility to DBS system applicants. Of particular note, a variety of entities agreed that DBS applicants should be permitted to deviate from the technical parameters contemplated by the ITU's band plan if there are "reasonable assurances" that the proposed non-conforming use can be coordinated with foreign administrations,<sup>1</sup> and that foreign ownership limits should not be imposed on subscription DBS and DTH-FSS service providers.<sup>2</sup> In addition, several parties affirmed the risk of using auctions to license international satellite systems<sup>3</sup> and, finally, one party highlighted a potential pitfall with the FCC's proposed definition of direct broadcast satellite

<sup>1</sup> E.g. Comments of DIRECTV, Inc. at 23; Comments of Tempo Satellite, Inc. at 3; Comments of PRIMESTAR, Inc. at 20; Comments of EchoStar Communications Corporation at 12. Contrary to SkyBridge's suggestion, Comments of SkyBridge L.L.C. at n.18, the Commission's proposed "reasonable assurances" standard provides adequate notice of the burden that must be met to justify a non-conforming system without unnecessarily constraining the Commission or future applicants and, therefore, should not be replaced with a more detailed and restrictive standard.

<sup>2</sup> E.g., Comments of PRIMESTAR, Inc. at 18; Comments of Loral Space & Communications Ltd. at 6; Comments of The News Corporation Limited at 8-10.

<sup>3</sup> Comments of DIRECTV, Inc. at 22; Comments of United States Satellite Broadcasting Company, Inc. at 4-5.

service.<sup>4</sup>

In a few respects, however, commenting parties urged the Commission to broaden the scope of its NPRM and impose new burdens on direct-to-home ("DTH") services transmitted using fixed satellite service ("FSS") facilities ("DTH-FSS services"). PanAmSat hereby responds to those comments.

First, PanAmSat opposes the suggestion by Univision Communications Inc. ("Univision") that the Commission should restrict the common ownership and control of DTH-FSS satellite services and competing, non-satellite, multi-channel video programming distribution ("MVPD") services. Even if one assumes that a cable-DBS cross ownership rule were warranted — a subject on which PanAmSat does not express an opinion<sup>5</sup> — such a rule is not justified with respect to DTH-FSS systems. The large amount of FSS capacity capable of being used to provide a U.S. DTH-FSS service means that the entire predicate for a cross-ownership rule is lacking with respect to DTH-FSS services: there is ample capacity and, hence, no possibility that incumbent cable operators will be able unduly to stifle competition. As a result, there is no basis to restrict cable ownership of FSS facilities or their use of those facilities to provide DTH services.<sup>6</sup>

Second, PanAmSat opposes the recommendation by the States of Hawaii and Alaska that the Commission expand the scope of the DBS geographic service obligation to encompass all DTH services provided by any geostationary Ka-band satellite.<sup>7</sup> Such an action falls outside the scope of this

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<sup>4</sup> See Comments of the Coalition for Satellite Competition (in defining the DBS service and adopting rules to govern that service, the Commission should take care to ensure that DBS-only rules do not apply to non-DBS services, even when such services are provided using BSS frequencies). Preserving the distinction between DBS and other satellite systems and services — and the rules that govern each — would be even more important if the FCC were to adopt any of the technical rule changes proposed in various comments (such as, for example, the "prior modification notice" suggested by TEMPO or the various rules to govern sharing of spectrum and orbital locations proposed by PRIMESTAR).

<sup>5</sup> While PanAmSat does not express an opinion on whether a cable-DBS cross-ownership rule is warranted generally, it does oppose the application of such a rule to operators using DBS systems licensed within the United States to provide services outside the United States. See PanAmSat Comments at 4.

<sup>6</sup> A cable/DTH-FSS cross-ownership rule would suffer from other problems, including difficulties in enforcement (by forcing either the Commission or FSS licensees to police the use to which transponder owners and lessees put their capacity).

<sup>7</sup> See Comments of the State of Hawaii at 3-5; Comments of the State of Alaska at 2.

proceeding and, therefore, would violate the Administrative Procedure Act. Moreover, the issue of a Ka-band geographic service requirement was expressly addressed in the Ka-band rulemaking, at which time the Commission decided to impose such an obligation on non-geostationary ("NGSO") — but not on geostationary ("GSO") — systems.<sup>8</sup> The States of Alaska and Hawaii have not offered any justification sufficient for the Commission to reverse this recent decision and impose a coverage area requirement on GSO Ka-band systems.

Imposing a geographic service requirement on GSO Ka-band systems, moreover, would not be in the public interest. There is no evidence in the record of this proceeding suggesting that Hawaii and Alaska will be underserved by GSO FSS systems or GSO DTH-FSS service providers, particularly given the relatively large number of GSO FSS satellites that are planned for launch, their location across the orbital arc, and the large amount of capacity they will make available to potential DTH service providers.<sup>9</sup> In contrast to the questionable need for a policy requiring coverage of Alaska and Hawaii, the economic and other costs it would impose would be significant. Coverage must be designed into a satellite and, generally, cannot be altered once the satellite has been launched. As a result, if satellite operators were required to ensure that any Ka-band transponder used to provide DTH services covered Alaska and Hawaii where technically feasible, the operator either would have to make all Ka-band transponders capable of serving Alaska and Hawaii (irrespective of the financial costs of such a design and its implications for service to other areas) or would have to deny transponder owners and lessees the right to use their Ka-band transponder(s) for DTH services. For all of the above reasons, the Commission should reject the recommendation by the States of Hawaii and Alaska.

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Arguably, the States of Alaska and Hawaii are urging an even broader rule that would impose an Alaska/Hawaii geographic service obligation on any service provided via a Ka-band satellite. See Comments of the State of Hawaii at 5.

<sup>8</sup> *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Report and Order*, 12 FCC Rcd 22310 at ¶ 34 (1997).

<sup>9</sup> Indeed, the one example of a Ka-band DTH system cited by Hawaii already proposes to serve CONUS, Alaska, and Hawaii, without any Commission mandate. See Comments of the State of Hawaii at n.14.

## CONCLUSION

The goal of this proceeding is to consolidate and streamline the Commission's DBS rules and to provide greater technical flexibility to DBS applicants. In light of this overarching goal, PanAmSat urges the Commission to reject efforts to impose new burdens on providers of DBS or DTH-FSS services and to craft its rules carefully to ensure that they apply only to the entities and types of services that reasonably and logically should be subjected to each restriction that is adopted.

Respectfully submitted,

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